

BEFORE THE  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA

Application for Certification of the:

GILROY CITY LM 6000 PROJECT BY  
CALPINE CORPORATION,  
Applicant.

Docket No. 01-EP-8  
Application Completed  
May 1, 2001

**FINAL DECISION**

The Gilroy City LM 6000 Project proposed by Calpine Corporation has been the subject of a Committee hearing and subsequent analysis by the Energy Commission staff. The proposal meets Energy Commission criteria developed to implement the Governor's Executive Orders expediting the permit process for peaking and renewable energy generating plants. This Proposed Decision has been completed in an expedited timeframe as called out in the Executive Orders and is submitted for approval by the full Commission. As the Presiding Commissioner assigned to review this proposal, I hereby recommend certification of the project under the limitations presented as conditions contained in this Proposed Decision and the Staff Assessment incorporated herein by reference.

**Executive Orders**

On January 17, 2001, the Governor proclaimed a State of Emergency due to constraints on electricity supplies in California. As a result, the Governor issued Executive Orders D-22 O1, D-24-O1, D-25-01, D-26-O1, and D-28-O1 to expedite the permitting of peaking and renewable power plants that can be on line by September 30, 2001, and provide power to California. Emergency projects are exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(4). Since the Governor has declared a state of emergency, the Energy Commission may authorize the construction and use of generating facilities under terms and conditions designed to protect the public interest. (Public Resources Code section 25705.)

## **Project Description**

Applicant Calpine Corporation ("Applicant") proposes to construct a 135 megawatt (MW) natural-gas fired simple-cycle peaking facility consisting of three 45 MW General Electric LM6000 PC Sprint turbine generators and associated facilities on approximately 7 acres adjacent to their existing Co-Generation plant at 1350 Pacheco Pass Highway, Gilroy, California. No new off-site linear facilities will be required. The project will connect to Pacific Gas and Electric's (PG&E) transmission system through a tap to PG&E's 115 kilovolt (kV) transmission line located on the site.

The Gilroy City LM 6000 Project ("the Project") is expected to begin commercial operation by September 30, 2001. A second project is contemplated by applicant which would add three more gas turbines to the existing site; however, this second project will not begin operating until after summer of 2001 which will require applicant to submit an application under the California Energy Commission's ("CEC") four-month process.

Applicant will obtain a permit from the Bay Area Air Quality Management District ("Air District") to operate approximately 3,900 full load hours per year per unit. Within this annual restriction, the units can be operated 7 days per week, 24 hours per day to meet electrical demand. The project will sell a portion of its generation (up to 2000 hours of power from each unit) under contract to the California Department of Water Resources ("DWR"). Generation that has not been sold through the DWR contract will be available for sale on the competitive market. The exact mode of operation of the project will therefore depend upon the quantity of electricity sold through the DWR contract and on the competitive market.

In order to qualify for the Energy Commission's expedited review, the project must begin commercial operation by September 30, 2001. Project construction will take approximately two to three months to complete and will begin upon Commission approval of the application and receipt of an Authority to Construct permit from the Air District.

## **Public Hearing**

On May 10, 2001, Robert A. Laurie, the Commissioner designated to conduct proceedings on this proposal, held a public site visit and informational hearing in Gilroy to discuss the project with governmental agencies, community organizations, and members of the public. At the hearing, the Applicant described the project and Energy Commission staff explained the Energy Commission's expedited review process. Local residents and other members of the public made comments and had the opportunity to ask questions about the project. See **Public Comment** section.

## **Issues of Concern**

The Energy Commission Staff Assessment was received into the record on May 15, 2001. The following issues were identified at the hearing and during the review and consideration period that followed.

## **Natural Gas Supply**

The three LM6000 PC Sprint turbine generators will be designed to burn natural gas. Maximum natural gas requirements are approximately 470 million British thermal units per hour (MMBtu/hr) higher heating value (HHV) for each unit. Natural gas for the project will be provided by connecting to the existing PG&E supply of natural gas located in Route 152 through interconnection valves, metering and piping. A natural gas line under Route 152 was installed as part of the original Gilroy Foods Co-Generation project so no new boring under the highway will be required for this project.

## **Air Quality**

As stated above, applicant will obtain a permit from the Air District to operate approximately 3,900 full load hours per year per unit. Applicant will meet Best Available Control Technology ("BACT") emission requirements for NO<sub>x</sub>, 5 Parts Per Million ("PPM"), by using Selective Catalytic Reduction ("SCR") and will meet BACT emission requirements for CO, 6 PPM, by using a CO Oxidation catalyst. SCR and the CO Oxidation catalysts will be installed at the start of operations of the facility. "The SCR unit will utilize aqueous ammonia stored onsite in a 25,000 gallon storage tank. There will be secondary containment around the ammonia storage tank to capture any accidental releases." The project will trigger offset requirements for NO<sub>x</sub> and CO emissions. Applicant has purchased credits necessary to satisfy the applicable emission offset requirements.

## **Biological Resources**

The project is located on seven acres of disturbed ground adjacent to the existing Gilroy Co-Generation facility, and Gilroy Foods warehouse and distribution center. In addition, agricultural fields (row crops), and an access road adjacent to Llagas creek, border the facility site. The proposed site is composed of three main areas, 1.4 acres that contains a former residential structure ("La Casa de Gilroy Foods") and associated buildings, three acres of experimental row cropland and 2.6 acres of greenhouses, storage buildings and parking areas. The existing vegetation located onsite aside from experimental row crops, is limited to the 1.4 acre "La Casa de Gilroy Foods" area. The vegetation is composed of several native and nonnative ornamental herbaceous species, as well as 18 native and nonnative trees scheduled for removal by the applicant. These trees may provide nesting habitat for special status bird species and surveys will need to be conducted prior to their removal.

A site survey conducted by Foster Wheeler Environmental on March 16, 2001 found no Threatened, Endangered or Sensitive (TES) species located on or adjacent to the site. A search of the California Natural Diversity Database (CNDD) (CDFG 2001) indicated a Least Bell's vireo sighting within one mile of the project site. Also, based on the habitat located on and around the project site, San Joaquin Kit fox, Western burrowing owl, and California red-legged frog may be encountered.

Least Bell's vireo is federal and state listed as endangered. There has not been any subsequent sighting of Least Bell's vireo along Llagas creek since the 1997 sighting. The San Joaquin kit fox is federally listed as endangered and state listed as threatened. No San Joaquin kit fox were observed during site surveys, but San Joaquin kit fox have shown a preference for disturbed and non-disturbed habitat, similar to that found around the Gilroy site. Therefore, the potential exists for San Joaquin kit fox to be encountered on the project site.

The Western burrowing owl is a federal and state species of concern. No Burrowing owls were observed during site surveys. However, due to the habitat on and around the project site, the potential does exist for burrowing owl to be encountered.

The California red-legged frog is federally listed as threatened. The proposed project site has a history of heavy disturbance and doesn't currently contain suitable upland habitat. However, red-legged frogs may still enter the area.

Based on the site surveys provided by Foster Wheeler Environmental, the project site and immediately adjacent areas do not contain any critical habitat or TES species. However, surveys for California red-legged frogs were not conducted and will need to be conducted prior to site disturbance. There is also a potential for transient TES species to be encountered during construction.

Condition of Certification BIO-7 requires the applicant to survey the project site and surrounding areas for kit fox, burrowing owl, and nesting special status bird species prior to site disturbance. Condition of Certification BIO-8 requires a survey for red-legged frogs and for applicant to verify the absence of suitable habitat prior to site disturbance. Condition of Certification BIO-10 requires that the Llagas Creek riparian area be surveyed for Least Bell's vireo prior to construction.

With the implementation of conditions of certification, the project will not result in any unmitigated impacts to biological resources.

### **Water Supply and Consumption; Wastewater**

The project will use approximately 462 gallons per minute ("gpm") of water at peak use. The existing Co-Generation facility's well water pumps are located within 0.1 miles of the project site. Sufficient well water supply exists to support the project. However, applicant would like to use reclaimed water from the South County Regional Wastewater Authority's existing reclaimed water facility. Applicant expects to obtain a "will serve" letter from the City of Gilroy to provide reclaim water to the project, though that water supply is not necessary for plant operations.

The project will generate about 70 gpm of process wastewater. The wastewater will be discharged to either Gilroy Foods or to the City of Gilroy's sewer system. The project does

not require a discharge permit for wastewater. The existing Co-Generation facility sends its wastewater to Gilroy foods, which operates under a use permit from the City of Gilroy. In addition, the turbines will each require 200 gallons of wash water for every 250 hours of operation. All wash and rinse water will be collected in an on-site portable water storage tank. The tank will be emptied as needed by a licensed contractor for proper disposal at a public wastewater treatment facility.

## **Land Use**

The project will occupy a seven-acre site on two contiguous parcels located at 1350 Pacheco Pass Highway (Route 152) in Gilroy. The site is currently utilized for agricultural research. Improvements associated with this activity include a wood-frame house used for research (dubbed "La Casa de Gilroy Foods"), outbuildings, greenhouses, equipment, and a storage area. Fourteen native trees and numerous ornamental trees are located on the eastern portion of the site in the vicinity of La Casa. These include box elder, California black walnut, western sycamore, Fremont's cottonwood, coast live oak, and blue elderberry.

Surrounding land uses include the existing Gilroy Co-Generation plant to the north, the Gilroy Foods Warehouse and Distribution Center to the west, and agricultural fields (row crops) to the south. Adjacent to and east of the site is an unpaved private access road, owned by the Santa Clara Valley Water District; immediately east of the access road is Llagas Creek. Other area uses include row crops to the south and west, fallow fields to the south and east, open space to the north (west of Llagas Creek), and row crops to the east (east of Llagas Creek). Except for a service station at the nearby US Highway 101/Route 152 interchange, US 101 separates the site from other land uses to the west, and Route 152 separates the site from other land uses to the north. The closest residential area is located north of the site and across Route 152, approximately 1,400 feet from the proposed site.

The project site is owned by Basic Foods Energy (Gilroy Foods) and is currently utilized by that company for agricultural research. The applicant owns the existing Co-Generation plant, and operates it on land controlled under a lease agreement with Gilroy Foods. The applicant is in negotiation to amend the lease to include the extension to include the project site, or to purchase the property, and does not yet have site control. Construction of the proposed facility would require equipment laydown and parking areas. While laydown would likely occur on the proposed project site, the applicant also proposes to include the Gilroy Foods parking lot for laydown and parking. This would require permission from Gilroy Foods to use their property for this purpose.

The site of the proposed project is zoned M-2, General Industrial. The nature of the project is consistent with the permitted uses cited. The City of Gilroy Zoning Ordinance stipulates lot coverage, height and additional requirements within the General Industrial District. The proposed project lot coverage will be less than 60% (the limit in the zoning district). The flue stacks, which are the tallest structures, will be 80 feet high, which is the same height as the existing flue stacks at the existing Co-Generation facility.

## Visual Resources

The project site is generally flat, and is utilized for agricultural research and associated structures. A large stand of native trees is located on the eastern portion of the site. Agricultural land is adjacent on the south and west. Llagas Creek is located to the east; to the east of the creek is agricultural land.

Project plans call for the development of three simple-cycle peaking combustion turbine generators, cooling towers, and associated facilities, including three 80-foot flue gas stacks. The plant, particularly the stack, would be visible from the east, west, and south. All area land within City limits (which includes the area south of Route 152) is zoned for industrial development, and future development would therefore be aesthetically compatible with the proposed plant expansion. The view from the north would be of the existing plant and Gilroy Foods, which would shield the new plant visually from the residential property to the north of Route 152. The proposed lighting system would provide illumination for normal operating conditions and emergency situations. This would be visible at night, but would not result in a significant increase in lighting above that generated by the existing plant and food operation.

Nighttime lighting for the existing Calpine Gilroy Co-Generation power plant is unshielded and causes significant light trespass off the site and contributes to illumination of nighttime plumes from the cooling tower. Additional nighttime lighting, even shielded, will only add to the illumination of the nighttime sky. To minimize the cumulative impacts of nighttime lighting, CEC staff has proposed Condition of Certification **VIS-3** to require that lighting for the existing power plant be shielded to eliminate light trespass off the site. The proposed Condition of Certification further requires that an evaluation to be conducted to determine if existing lighting can be minimized consistent with safe working light levels through the use of motion detectors or other controls.

Preliminary landscape plans indicate that plantings would be made along the Santa Clara County Water District access road immediately east of the project site. This would require the applicant to obtain an easement or some other agreement for usage, as well as an agreement for maintenance of the landscaped areas. On-site landscaping is not proposed, based on the premise that the M-2 zoning does not require setbacks on property boundaries that are not adjacent to public roadways. However, the City's Consolidated Landscape Ordinance requires screening on exposed side and rear yards, and reserves the City's authority to require additional screening for parking lots, storage yards, fences or other features.

The most visible feature of the plant expansion would be the three flue stacks.

The project is also subject to specific Conditions of Certification **VIS-1, VIS-2, and VIS-3**, which require steps to ensure mitigation of potential visual impacts and the inclusion of a city-reviewed landscaping plan for the project. Implementation of these conditions will reduce the project's visual impacts to a less than significant level.

## Hazardous Materials

Plans and programs for hazard assessment, emergency response, and process management systems are in place for applicant's existing Co-Generation plant. Applicant plans to expand current programs to include this project which will use aqueous ammonia and natural gas. Aqueous ammonia will be used for control of NOx emissions and will be held in the existing ammonia storage tank in the Co-Generation plant. The use of 19 percent aqueous ammonia precludes any potential for significant impact at the nearest residences that are located approximately 1400 feet from the project.

## Noise

Existing noise sources in the vicinity of the project include the Gilroy Foods plant, the existing Co-Generation plant, agricultural activities, and traffic from U.S. 101 and Route 52. The nearest sensitive receptor is a residential development located approximately 1,400 feet from the project site on Cedar Lane.

An ambient noise survey was conducted over a 25-hour period on March 23-24, 2001, at the nearest house at 1535 Cedar Lane, located just outside of Gilroy City limits in Santa Clara County. Noise levels at this location would nonetheless be subject to City noise standards, because the noise source is within the City. The city's maximum permissible outdoor noise level for residential is 60 dBA Ldn<sup>1</sup>. The survey indicated that the existing noise level at the nearby residences is 66.9 dBA Ldn as a result of significant vehicular traffic on Route 152. This noise level is expected to increase, regardless of the proposed plant expansion, because of plans to widen Route 152 (scheduled for late 2002). Because maximum thresholds have already been exceeded, any increase in noise would be considered significant.

CEC staff, utilizing noise data supplied by applicant and generally accepted methods of calculating noise levels, concluded that 57 dBA is the noise level that could not be exceeded at the sensitive receptor without creating a significant adverse impact. The plant noise level generated by the project is expected to be 54.6 dBA, which is below the 57 dBA threshold calculated by CEC.

The highest noise level at the site boundary would be 67.4 dBA on the south boundary, which translates to a Ldn of 73.8 dBA. This is within the city's noise threshold of 76 dBA Ldn for industrial properties.

The majority of construction on the project will occur during daytime hours, when the background noise at the sensitive receptors would be higher because of traffic. Although construction would add to noise impacts, the activity is temporary in nature, and would cease upon completion of the project. The applicant has proposed nighttime construction, but has

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<sup>1</sup>"Ldn" represents a weighted average to account for greater sensitivity to noise during the nighttime hours. Ldn is calculated as the equivalent noise level obtained during nighttime hours.

indicated that the activities performed during nighttime hours (10 PM to 7 AM) would not generate noise in excess of the City's noise standards. The applicant has also indicated that it would release steam or perform any other excessively loud operation during these hours.

Implementation of Condition of Certification NOISE-1 would require that the project comply with community noise standards. The proposed construction and operation of the plant expansion would meet community noise standards at the project boundary. However, since community noise standards are already exceeded at the sensitive receptor site, and because noise levels at the receptor site are influenced by traffic, this condition would not apply at the sensitive receptor site. Based on the analysis provided above, the project's contribution to the noise level at the sensitive receptor site could not exceed 57 dBA Leq without creating a significant adverse impact. The proposed construction and operation of the expansion plant would not exceed this criterion.

Condition of Certification NOISE-1 requires that the project owner monitor actual project noise contribution at the nearest residence. If the project noise at that location exceeds 50 dBA between the hours of 10 PM and 7 AM, the project owner will be required to retrofit the project with mitigation measures that will reduce noise to this level. Such mitigation measures could include, but not be limited to, the addition of mufflers, and the addition of natural or man-made sound barriers, such as berms or sound walls.

With regard to construction, Condition of Certification NOISE-4 requires that nighttime construction activities be permitted only if noise levels from construction are consistent with local noise ordinances by limiting construction activities to those that will not exceed local noise standards during the hours of 10 PM to 7 AM.

With the implementation of the conditions of certification, the project will not result in a significant noise impact to anyone including nearby residents.

### **Public Comment**

Issa Ajlouny posed a number of questions to the applicant. His first question dealt with the capacity of existing transmission lines to handle an additional load. Applicant responded that preliminary studies from PG&E indicate that the existing transmission facilities can handle the additional load from two of the three proposed turbines (90 MW). The third unit will require a remedial action scheme. Any additional load beyond this project would require PG&E to "reconductor" the transmission lines. If the load exceeded 400 MW, new transmission towers would have to be built. Mr. Ajlouny's second question involved applicant's contractual obligation to supply power from the project to the State of California. Applicant explained that the contract with the DWR requires that a minimum of 2,000 hours of electricity per unit be supplied annually at times specified by the State of California. The State of California could purchase additional hours at a negotiated price. Mr. Ajlouny asked if air emission offset credits were required and in what amounts. Applicant responded that the Air District did require the purchase of offset credits for both hydrocarbons and NOx.



The amount for NOx is 45.4 tons annually and the amount for hydrocarbons is 7.9 tons per year. Applicant acquired the banked certificates from Contra Costa County.

Tom Springer, Mayor of the City of Gilroy, spoke in favor of the project. While the City of Gilroy has not taken a formal position on the project, Mayor Springer expressed that the project will provide a significant economic benefit to the City of Gilroy and the rest of the region. The nearby City of Morgan Hill has endorsed the project. Mayor Springer said that the project is compatible with surrounding land uses and is compatible with surrounding proposed land use. Mayor Springer is also the Chairman of the Board of Directors of the South County Regional Wastewater Facility. The facility produces 3 million gallons of treated wastewater. Even during summer months, the facility is unable to market 1 million gallons of the 3 million gallons of treated wastewater produced and the excess must be pumped into percolation ponds. The City has had to purchase land for the percolation ponds which would otherwise be available for agricultural purposes. The facility would very much like to sell the wastewater to applicant. The revenue from the sales will be used to help pay the electrical costs of operating the wastewater facility.

Robert Beams resides at 1545 Pacheco Pass Highway, Gilroy, California. While the project is in the limits of the City of Gilroy, his house is not. Mr. Beam's wife suffers from asthma and he is concerned about the project's air emissions. A second concern is the noise generated from the project. When the existing Co-Generation facility began operations, the facility's boiler was often "vented" which produced what Mr. Beam described as a deafening noise. Silencers have been installed and the venting is more occasional now. The noise from the normal operation of the existing plant is most noticeable at night when there is less traffic on Route 152. A final concern expressed by Mr. Beams was the visual effect of the existing facility across the road from his house with its flue stacks and visible emissions from them.

The project's potential noise, visual impact, and air emissions are addressed in the attached Staff Assessment (including the related Conditions of Certification) and in the portions of the proposed decision designated **NOISE, VISUAL RESOURCES, and AIR QUALITY**. Specifically, the project must comply with the terms and conditions of the Authority to Construct and the Permit to Operate issued by the Air District. This includes the obligation to meet Best Available Control Technology for controls on emissions including Oxides of Nitrogen and hydrocarbons. The plume described by Mr. Beams is steam emitted from the flue stacks of the existing Co-Generation facility. Condition of Certification **AQ-1** also requires applicant to prepare a plan to mitigate construction dust from the project. Visually, CEC staff acknowledge that nighttime lighting of the existing Co-Generation facility is unshielded and casts an offensive glare off-site as well as illuminating the existing flue stacks. Condition of Certification **VIS-3** requires the applicant to shield the existing lighting to eliminate light "trespass" from the site. **Vis-1** requires applicant to design and install all lighting so that light bulbs and reflectors are not visible to the public and illumination of the vicinity and nighttime sky are minimized. These conditions should greatly reduce the visibility of the existing Co-Generation facility and the flue stacks of the new project during nighttime hours.

The Conditions of Certification relating to noise address a number of Mr. Beams' complaints. **Noise 1** requires the applicant to conduct a noise survey after the project is running at 80% capacity to determine the noise levels from the project compared to those measured before the project came on line. One measuring location will be the "closest sensitive receptor" (Mr. Beams' residence). If the noise exceeds 50 dBA between 10 PM and 7 PM, additional mitigatory measures must be undertaken by applicant to reduce the noise to an acceptable level. These might include sound deadening devices or buffers on site or retrofitting the Beam's residence. **Noise 3** requires applicant to document any noise complaint and notify the County Environmental Health Department and the CEC Compliance Project Manager ("CPM"), including the resolution of the complaint. **Noise 4** requires the CPM to authorize nighttime construction activities and those that exceed the City of Gilroy's noise standards will not be allowed. Steam "blows" are prohibited during nighttime hours.

Dick Wocasek spoke on behalf of the Air District. The Air District has completed its preliminary determination of compliance for the project and has concluded that the project meets all applicable regulations. The application has been published for the 30-day public comment period.

Terry Feinberg resides at 6990 Angela Lane, Gilroy, which is approximately two and a half to three miles due east of the project. He can see the flue stacks of the existing Co-Generation facility from his house. He supports the project and regards the site as ideal with its existing power plant, natural gas lines, and transmission lines. The project will help alleviate the excess treated wastewater problem.

Justin Bradley is the Energy Director for the Silicon Valley Manufacturers Group. The group comprises 190 member companies and approximately 275,000 workers in the Silicon Valley, many of whom live in Gilroy. The group supports the project as a source of reliable power this summer and in the future.

Bill Lindsteadt is the Executive Director of the Gilroy Economic Development Corporation. He expressed the critical need for electrical power in the City of Gilroy. Gilroy's economy has evolved from one based primarily upon agriculture to a regional center for light industry in the South Santa Clara Valley. He said that Gilroy needs the project to support such growth.

John Redding is the Co-chair of the Energy Committee for the silicon Valley Manufacturers Group. His committee performed their own evaluation of the project and they support the project to foster strong economic growth in the region. He mentioned the likely economic effects of "rolling blackouts" and felt the project and those like it will mitigate such effects. The peaker facilities, in his view, are much better environmentally than the diesel generators that will be used by manufacturers and essential service providers in the absence of such facilities.

Jeff Micko represented the Santa Clara Valley Water District. His district has partnered with the City of Gilroy to develop Gilroy's waste treatment facility. He encouraged the use of treated wastewater by the project.

Tony Sudol is a Gilroy City Councilman. He also sits on the Board of Directors of the South County Regional Wastewater Authority. He is wholly in favor of the project. He is concerned that if safe sources of power are not available, people may turn to unsafe methods of providing power for heat and other purposes. He feels that the project is in the best interests of the City of Gilroy and all the state's citizens.

William Garbett represents T.H.E. P.U.B.L.I.C., an environmental organization. He expressed concern that the treated wastewater used in the project not come from human waste. He also recommended the use of electrostatic precipitators to remove small particles from the project's exhaust. He also expressed concern about the safe transportation of ammonia to the project.

### **Staff Assessment**

On May 15, 2001, Energy Commission staff issued its Staff Assessment, which is attached hereto and incorporated herein by reference. Staff conducted a "fatal flaw" analysis and found no areas of major concern related to the project.

All conditions contained in the Staff Assessment are hereby adopted as the Conditions of Certification for Gilroy City LM 6000 Project.

### **Authority to Construct Permit**

Analysis of the air quality impacts of emergency permit applications is performed by the California Air -Resources Board and the Air District. Applicant filed an application for an Authority to Construct ("ATC") permit with the Air District on April 20, 2001, and it was deemed complete.

The ATC permit is a requirement of the U. S. Environmental Protection Agency (USEPA). The application is subject to a 30-day notice and public review and comment period, which began on May 7, 2001. The ATC permit will become effective on the date designated by the Air District, including any modifications approved following the comment period. All conditions and any modifications thereto contained in the ATC permit shall be incorporated herein by reference on the effective date of the ATC permit.

### **TERMS OF CERTIFICATION AND PERMIT VERIFICATION**

The project is a simple-cycle project that will operate during periods of high demand. Applicant requests certification for the life of the project. Construction will begin upon certification by the Energy Commission and issuance of the Authority to Construct permit by

the Air District. Project construction will take approximately three months. The project is expected to begin commercial operation September 30, 2001.

The project shall be certified for the length of applicant's power purchase agreement with the California Department of Water Resources. If, at the end of its power purchase agreement with DWR, the project owner can verify that the project complies with the following continuation conditions the Energy Commission shall extend the certification:

**Verification:** At least six months prior to the expiration of its power purchase agreement with the DWR, the project owner shall provide verification that the project will meet the following criteria:

1. The project is permanent, rather than temporary or mobile in nature.
2. The project owner demonstrates site control.
3. The project owner has secured permanent Emission Reduction Credits ("ERCs") approved by the Air District and the California Air Resources Control Board ("CARB"). The ERCs must be adequate to fully offset project emissions for its projected run hours and must have been in place prior to the expiration of the temporary ERCs obtained from CARB if temporary ERCs were used for the initial operation of the project.
4. The project is in current compliance with all Energy Commission permit conditions specified in this Decision.
5. The project is in current compliance with all conditions contained in the ATC permit from the Air District.
6. The project meets all Best Available Control Technology ("BACT") requirements under Air District rules, as established in the ATC permit, and all CARB requirements.

The certification shall expire if the project cannot meet the continuation criteria.

## **FINDINGS AND CONCLUSIONS**

1. There is an energy supply emergency in California.
2. All reasonable conservation, allocation, and service restriction measures may not alleviate the energy supply emergency.
3. Public Resource Code section 21080(b)(4) exempts emergency projects from the requirements of the California Environmental Quality Act.
4. Executive Order D-28-01 states that "[a]ll proposals processed pursuant to Public Resources Code section 25705 and Executive Order D-26-01 or this order [D-28 O1] shall be considered emergency projects under Public Resources Code section 21080(b)(4)."
5. The Gilroy City LM 6000 Project is a simple-cycle facility that will operate during periods of high demand.

6. The Application for Certification for the Gilroy City LM 6000 Project has been processed pursuant to Public Resource Code section 25705 and Executive Orders D-26-O1 and D-28-O1.
7. Pursuant to the Executive Orders cited above, the Gilroy City LM 6000 Project must be on line no later than September 30, 2001, in order to help reduce blackouts and other adverse consequences of the energy supply emergency in the state.
8. In order for the Gilroy City LM 6000 Project to be on line by no later than September 30, 2001, it is necessary to substantially reduce the time available to analyze the project.
9. To the greatest extent feasible under the circumstances, the terms and conditions specified in this Decision (1) provide for construction and operation that does not threaten the public health and safety, (2) provide for reliable operation, and (3) reduce and eliminate significant adverse environmental impacts.

### **Recommendation**

Having heard the presentations and reviewed the record in this proceeding, I believe that, with the mitigation identified in (1) the Application as amended, (2) the Conditions of Certification identified in the Staff Assessment, (3) the Authority to Construct permit, and (4) as otherwise described in the record, the proposed facility will be designed, sited, and operated in a safe and reliable manner to protect the public interest. Therefore, I recommend that the Energy Commission adopt this Proposed Decision and certify the Gilroy City LM 6000 Project as described in this proceeding.

### **Monitoring Conditions**

The project owner shall comply with the following monitoring conditions in addition to the Permit Verification process contained in this Decision and in addition to the General Compliance Conditions delineated in the Staff Assessment and incorporated herein by reference:

**Start of Operations:** The Gilroy City LM 6000 Project shall be on line by *no later* than September 30, 2001. If the Gilroy City LM 6000 Project is not operational by September 30, 2001, the Energy Commission will conduct a hearing to determine the cause of the delay and consider what sanctions, if any, are appropriate. If the Energy Commission finds that the project owner failed to proceed with due diligence to have the Gilroy City LM 6000 Project in operation by September 30, 2001, the Applicant shall forfeit its certification.

**BACT Standards:** Operation of the Gilroy City LM 6000 Project shall be in compliance with all Best Available Control Technology (BACT) standards imposed by the BAAQMD in its Authority to Construct permit. Failure to meet these standards will result in a finding that the Gilroy City LM 6000 Project is out of compliance with the certification.

**Three-Year Review:** No later than 15 days after completion of the first three years in operation, the owner of the Gilroy City LM 6000 Project shall submit to the Energy Commission a report of operations that includes a review of the Project's compliance with the terms and conditions of certification, the number of hours in operation, and the demand for power from the facility during the three-year period.

Dated this 21st day of May 2001, at Sacramento, California.

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William J. Keese  
Chairman